

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

Crl.L.P..No. 649 of 2006()

ST.3753/2003 of J.M.F.C.-I, PERINTHALMANNA

PETITIONER/COMPLAINANT;

ABDUL MALIK, S/O. ABDU MUSLIYAR,
KOLAKKATTIL HOUSE, ARAKKUPARAMBA AMSOM, DESOM,
PERINTHALMANNA TALUK (SON AND LEGAL HEIR OF THE
ORIGINAL COMPLAINANT ABDU MUSLIYAR).

BY ADV. SRI.P.SAMSUDIN

RESPONDENTS: ACCUSED AND STATE:

1. A.V. JOHNSON,
MANAGING PARTNER, M/S. ANIKKAL RUBBERS,
ANAMANGAD, PERINTALMANNA TALUK.
2. A.V. JOSEPH, PARTNER, -DO- -DO-.
3. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.C.M.NAZAR FOR R3

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD
ON 22/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. Thankappan, J.

Crl.L.P. No. 649 of 2006

Dated this the 22nd day of January, 2007

ORDER

This is a petition to grant special leave to file an appeal against the judgment in S.T. Case No.3753/2003 on the file of the Court of the Judicial Magistrate of First Class-I, Perinthalmanna. Petitioner was the complainant in the above case. In the complaint it is stated that the respondents, who were the Managing Parnter and Partner respectively, had issued a cheque in favour of the petitioner towards their liability and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund. To prove the case against the respondents, the petitioner examined PW1 and PW2 and produced Exts.P1 to P10. After closing the prosecution evidence, the respondents were questioned under section 313 Cr.P.C. They denied all the incriminating circumstances put to them. The trial court found that in Ext.P1 cheque there was only the signature of one person in the capacity of partner of the firm. The trial court also found that PW1 was failed to prove the issuance of Ext.P1 cheque by respondents 1 and 2 in favour of the petitioner. The views expressed by the trial court is on the basis of a decision of this Court reported in Devi V.

Haridas (2004(3)) KLT 355. The learned counsel for the petitioner submits that as per a decision of the Apex Court reported in S.M.S.Pharmaceuticals Ltd. V. Neeta Bhalla (2005(4) KLT 209), it is not necessary to specifically state in the complaint that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company and hence judgment of the trial court is not sustainable and it require reconsideration by this Court. On going through the decision of the Apex Court, this Court finds that the Apex Court clearly stated that it was necessary to specifically aver in a complaint that at the time the offence was committed, the person accused was in charge of and responsible for the conduct of business of company. Admittedly, Ext.P1 cheque was issued by a partner of the respondents' company and he was not authorized to do so. Hence, the finding entered by the trial court does not require any interference by this Court. The leave to appeal is rejected, accordingly. The petition is dismissed.

**K. Thankappan,
Judge.**

mn.

K.Thankappan,J.

Crl.L.P.No. /2006

Judgment
-12-2006